

PATENT

Application # 10/81533

Attorney Docket # 109403

BEST AVAILABLE COPY**REMARKS**

The Examiner is respectfully thanked for the thoughtful consideration provided to this application. Reconsideration of this application is respectfully requested in light of the foregoing amendments and the following remarks.

Claims 1-21 are now pending in this application. Each of claims 1, 13, and 14 are in independent form.

The Restriction Requirement

In response to paragraph 1 of the Restriction Requirement, applicant respectfully elects Group II, claims 1-12. Each of these elections is made with traverse.

Without admitting distinctness, Applicant respectfully submits that claim 1 is a linking claim that properly links all of the remaining claims of the application, and thus must be examined with any elected claims. See MPEP 809.

In support of the traverses, Applicant respectfully submits that 35 U.S.C 121 is only applicable if two or more "independent and distinct" inventions are claimed in one application. See also 37 CFR 1.141 and 37 CFR 1.142. A *prima facie* showing of both requirements, has not been made. For example, a relationship has been disclosed between the subject matter of each of the claims of Group I and Group II. See MPEP 802.01. Moreover, no reasonable showing of a lack of unity of invention between claim 1 and any of the remaining claims of the application has been presented. Further, no reasonable showing of a lack of unity of invention between the claims of Groups I, II, and/or III has been presented. "It is improper for the Office to refuse to examine that which applicants regard as their invention, unless the subject matter in a claim lacks unity of invention." See MPEP 803.02. See also 35 U.S.C. 101, and *Steinmetz v. Allen*, 192 U.S. 543, 563 (1904).

The Office Action includes the statement that "[i]n the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the

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subcombination requires at least a lateral head support, which is not required by the combination." Neither claim 1 nor claim 14 cite "a lateral head support". Thus, Applicant respectfully requests support for the statement that "the subcombination requires at least a lateral head support, which is not required by the combination".

The Office Action includes the statement that "[t]he subcombination has separate utility such as a portable supporting apparatus for an article such as a sign or an article of clothing." There is no explicit disclosure of such utility in the application. Moreover, no evidence has been presented that any such utility would not be shared by both the combination and the subcombination. Thus, Applicant respectfully requests support for that statement.

Because claim 14 does not claim a "process of making" "a headrest assembly", Applicant respectfully requests support for the Office Action statement that "[i]nventions I and II are related as process of making and product made."

Because claim 14 does not claim a "process of making" "a headrest assembly", Applicant respectfully requests support for the Office Action statement that "[i]nventions II and III are related as process of making and product made."

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CONCLUSION

It is respectfully submitted that, in view of the foregoing amendments and remarks, the application as amended is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Deposit Account No. 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

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Date: 9 March 2005


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